

Summary
Task Force on the Planning and Development of
Marine Aquaculture in Maine
Thursday, October 16, 2003
The Trade Winds – Rockland, Maine

TF members attending: Jim Salisbury, Des Fitzgerald, Van Perry, Brian Beal, Jim Dow, Paul Anderson, Will Hopkins, Josie Quintrell

SAP members attending: Dave Schmanska, Erick Swanson, Sebastian Bell, Eric Horne, David Turner, Chris Hamilton, Rob Bauer and Carolyn Manson.

Legislators attending: Sen. Dennis Damon and Reps. Thomas Bull and Leila Percy.

Panel Presentations

Kathleen introduced the public trust panel, Dan Prichard of Dept. of Conservation on submerged lands, Jeff Pidot of the Maine Office of the Attorney General on public trust, Dave Schmanska, Harbormaster, on municipal perspective.

Dave Schmanska referenced his white paper and fielded questions of the TF and SAP. Dave thinks that a municipal voice is lacking today. He noted that much of this is perception but perceptions are real. Dave proposed that towns be granted automatic intervener status, and also proposed a formalized role for municipal review of aquaculture proposals. He does not envision changes to the current decision-making process and he is not proposing veto power for municipalities. The Review Board would be composed of, among others, local authorities who have opportunity to participate from the beginning to end of process. He sees this as a way to iron out problems beforehand on issues such as noise and visual mitigation. A question arose on what other criteria should be added to decision criteria for review board's consideration but no clear answer emerged.

Regarding the question of why intervener status should be automatic for towns, Dave noted that it doesn't mean that the municipality need take advantage of it. Mary Cosign noted that currently municipalities are granted intervener status on request. Granting their request for this status is easily done, but to automatically grant intervener status places a burden on DMR with filings, notices, mailings, obtaining responses etc. Discussion on whether granting automatic intervener status was addressing a real or perceived problem ended in noting that it addresses a perceived, rather than actual problem, since intervener route already exists. Additional education on the ability of municipalities to participate in the review process would help.

Des also asked, if municipalities were provided with enhanced authority over aquaculture siting, would towns such as Blue Hill ever grant permission for a lease? Dave noted that

as long as the criteria were met, a town would have to grant permission. A harbormaster who makes a decision because he just doesn't like someone or doesn't want aquaculture will be overturned. Dave noted that Harbormasters do not deal with aesthetics.

Jeff provided an overview of the public trust doctrine and the State's responsibilities for management of state-owned submerged lands. Jeff Pidot noted that the only important lawsuit on aquaculture in Maine was *Harding vs Commissioner* 20 yrs ago. In that case, a property owner sued DMR for granting a lease that allegedly affected his property value. Plaintiff succeeded in Superior Court. The State appealed to state Supreme Court that reversed the lower decision stating that there is nothing in criteria about property values and nothing in public trust doctrine that directs the state to consider purely private property values over public use. Only the legislature can change the types of uses that are considered to be beneficial public uses of state submerged lands. In the case of aquaculture leasing, the authority to convey a lease has been delegated to the DMR by the legislature and the leasing criteria includes provisions for considering and protecting public uses (such as fishing, navigation, etc.)

Jeff discussed the role of municipalities in planning and regulating activities in the water. Some towns have clear municipal boundaries that extend into submerged lands, but this varies by town (e.g. Rockland has defined municipal waters as extending beyond low water while other towns, even most, have not). There is some uncertainty about municipal jurisdiction to regulate activities beyond mean low water, under both the Maine's Shoreland Zoning and Growth Management Laws that would benefit from additional case law. Currently, these waters are STATE resources and therefore state makes the call recognizing and considering local concerns in the context of the larger state. At one time, the aquaculture lease law required compliance with municipal ordinances but that section of the law was repealed.

Jeff discussed the existing procedure for granting leases. While adjudicatory hearings under the guidelines provided by the Administrative Procedures Act are used by DMR for aquaculture leasing, that process is not used for leasing of submerged lands by the Dept. of Conservation

Dan Pritchard reviewed how the Dept. of Conservation leases submerged lands. The Bureau of Submerged Lands, representing the state as the property owner, decides if a patch of bottom should be leased to a private entity. DOC does not review the environmental issues associated with actual activities proposed for the leased sites, but rather environmental reviews are done by other agencies under other authorities, e.g. NRPA. Aquaculture has exemptions for environmental review under the NRPA because criteria were inserted into the leasing law to address environmental impacts. Similarly, the authority to grant aquaculture leases was given to DMR and criteria for evaluating the impact on public trust uses was included in DMR's leasing criteria.

In Dan's experience, ninety nine percent of submerged lands leases are approved and of that are not, it is usually due to issues other than public trust. DOC does not consider issues such density of leases of a particular shoreline for docks and piers, leaving such

issues to municipalities. DOC rules do allow for compensation if there is a finding of adverse impact to the public trust, i.e. public access. This rarely comes up, however.

Work Session on Municipal Jurisdiction

There needs to be some mechanism for municipalities to be involved in process so the state and applicants can benefit from local knowledge. The current process may be disenfranchising locals yet any amended system needs to balance local needs with larger public trust issues. The whole leasing process is not broken. Folks need to be specific when they speak of “disenfranchisement”. While the state currently seeks input from municipalities, perhaps it does not look enough to local people or groups that represent regional and ecosystem interests.

The discussion then evolved to a conversation about bay management. Even without immediate creation of a system to create and implement Bay Management plans, there are specific things that can be done to improve the current system. Discussion over the pros and cons of carving up the coast into zones ensued. Once an aquaculture exclusion zone is created, there will never be a chance to reverse it. Further, there will be pressure to expand and add to these zones once the concept is in place. The alternative is to figure out how to develop a working waterfront with criteria and goals that address identified needs. Using this approach, a list of goals and criteria for Bay Management were proposed.

- Carrying Capacity considered
- Provides for multiple-use
- No moratorium while plan is being developed and adopted
- Formal review board that has a formula for participation
- Prescribed duties of Review Board
- Adaptive and flexible
- Public trust crucial consideration
- Participation from industry, other economic interests, towns, Zone Councils etc.

The distinction between planning and management was noted. Planning assumes that management will respect the plan. It was noted that that the development of aquaculture in Maine was intended as an economic development strategy to protect rural communities and life styles. This may not be an appropriate strategy for the Blue Hill area. Industry appears willing to concede some bottom if it knows it has a place in Maine without fighting. Are “increased and improved municipal involvement” and “Bay Management” the same? No, municipal involvement is subset and can be dealt with now. BM is longer and complex and changes to existing laws would be needed. Questions such as “who qualifies as a participating stakeholder?” would have to be resolved.

Even a Bay Management system does not eliminate the need to “react” to individual lease applications. Some TF members pointed out that the pre-application work by an applicant is a bay management process and could contribute to bay planning. What is learned from first application should be available to next person and could feed into bay planning. Concern was noted that a Bay Management Review Board would create yet another level to base a lawsuit. It became clear that two approaches were being

discussed; one is inclusive body that plans, the other is inclusive body that responds to applications. Currently, there is no mechanism to bring people to table short of a hearing unless the state's position is changed from a "are we going to have aquaculture?" to "we are going to, but where and how?"

Josie described a Bay planning approach –

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- voluntary by region,
- must assume aquaculture has a place,
- the planning area must be based on an ecological framework,
- process involves science,
- **stakeholders should represent towns, fishermen, tourists, riparian owners, gen'l public, conservation groups, and state.** Decision criteria would have to include fishing, navigation, conservation lands, scenic lands, and public trust issues.
- A Bay Plan Review Board would produce recommendations to the state on 3 types of areas within a bay, 1) those areas suitable for aquaculture with a streamlined permit process, 2) exclusion zones or areas of statewide significance for scenic, ecologic, and cultural values, and 3) areas that are potentially favorable for aquaculture where aquaculture leases would be entertained on a case by case basis (e.g. current status quo).
- These planning areas would feed into the current leasing process and there would be a formal public adoption process.

Questions arose on whether there should be areas identified where the placement of an aquaculture lease is guaranteed. The group speculated about "What is aquaculture?" Does it include stock enhancement and lobster pounds? Any plan needs to address all aspects of aquaculture and leave the door open for innovation.

The group discussed issues concerning how the state would allocate lease in areas that were identified as suitable for aquaculture. Would leases be awarded to the highest bidder? Highest bidder might not be local and likely won't be. Is this consistent with the helping rural communities? Does this promote large operations over small owner-operators?

The group discussed how Josie's approach contrasts with current system. It would formally include and engage local participation. Most importantly, it would provide those communities or jurisdictions that want to create a bay plan with a vehicle to do so. Other communities who don't have the will or resources would not create a plan and the existing process for consideration of aquaculture permitting would be used. It was clarified that voluntary doesn't mean those who scream loudest can "volunteer". It is important that the Review Board be balanced.

David Etnier offered an alternative proposal – creation of regional review boards for each embayment, consisting of a group of appointed, representative stakeholders that would

add local knowledge to the leasing process through a pre-application meeting. The regional board could, suggest conditions, mitigation measures, etc. as a way to immediately deal with local and regional concerns. These review boards could be given intervener status. In making a leasing decision, DMR would have to consider the views of the regional review board and if their suggestions were not adhered to by the DMR, the agency would have to explain why.

David voiced concern that a prescriptive approach, such as that described by Josie might be counter to other goals for good aquaculture permitting process, i.e. the desire to be flexible, the ability to benefit from new technology, and the ability to adapt to environmental changes and needs.

It was noted by the group that the two approaches (referred to for the sake of convenience) as the “long range bay plan approach” (Josie’s idea) and the “improvement of existing process approach” (David’s idea) are not necessarily mutually exclusive.

Action Item –

David Etnier and Jim Salisbury will flesh out the “improvements to the existing process approach by next meeting.

Josie, Paul and Des will flesh out the “long range bay planning approach” by the next meeting.

Stakeholder Comments on AM Meeting

Dave Schmanska thinks that there is still great value in educating the public and municipalities. By including people in a review board such as described by David, we would be providing them with experience and background that would assist with the long range bay planning approach in the future. Rep. Leila Percy contrasted the impact coastal development is having on coastal waters to that of aquaculture and working waters.

Erick Swanson noted that pursuing improvements to the existing process is the best way to build planning model and that we don’t know what will exist in future. Sebastian Bell doesn’t believe either these approaches will reduce the level of conflict – if someone is opposed, they can litigate regardless. He would like some way to prevent litigation. The “disenfranchised” won’t feel better unless there is way to deal with underlying issues with criteria that address them (e.g. scenic). Once exclusionary zones are set, they will never be repealed.

Afternoon Session

Economics Presentation

Michael Gardner & Andrew Storey

Michael Gardner gave a power point presentation on the results of Gardner Pinfold’s economic study of aquaculture in Maine. He indicated that aquaculture represents economic opportunity for coastal rural areas because what is produced is exported, which generates the income. The study had two components: 1) economic impact of industry; & 2) viability of 6 species

They interviewed 25 producers and industry stakeholders, developed economic impact estimates & conducted viability analysis. They concluded that the economic impact is \$60-\$65 million in sales revenue, 330 full time jobs (most in salmon), and the main species grown are salmon, mussels, and oysters. He stated that the number of jobs has decreased because processing has moved out of Maine. The direct, indirect and induced impacts were summarized as \$45 million GDP of state of Maine, 865 jobs, and \$7.5 million in taxes. He referenced another study that was just completed (“Economic Impact of Aquaculture in Maine” by Planning Decisions, Inc. 10/14/03) He indicated that the difference between the two studies can be explained by the definition of industry scope which accounts for substantial amount of the different figures. He summarized the results of the viability component of the study, which was based on information provided by growers and other sources. The viability test is the internal rate of return.

Atlantic Salmon: 1,000 t minimum economic size; viable at \$1.80/lb farm gate price; potential for 30-50% expansion in ME; constraints – opposition, international competition, capital (if independent), 2002 court ruling.

Halibut: commercial production in Norway, Scotland, Canada; 500,000 lb farm viable at \$4.50/lb; suitable marine conditions in Maine; cage systems augments salmon production; constraints – opposition and capital and possibly water temp.

American Oyster: excellent biophysical and market conditions; 200,000 oyster farm - \$0.50 viability; substantial expansion possibility; growers expanding; constraints - JOD and obtaining a lease.

Blue mussel: 2 raft 2000 bushel minimum economic size; \$60 per bushel; substantial expansion possibility; constraints – market and local opposition.

Sea scallop: suspension and bottom methods; viable production in Japan and Chile; viability requires scale and predator control; not viable at recent prices; constraints – capital, market, competition for space.

Soft shell clam: excellent biophysical conditions; history of community management; seeding and protecting flats not commercially viable; constraints – water quality and access arrangements.

Cod: advanced stage of production; production in Norway, experimenting in Scotland and Canada; juvenile production capacity; suitable conditions and active interest in Maine; water temperature may be problem.

Haddock: early stage of development; active interest but lags development; experimental cage in New Brunswick.

Future: Salmon – uncertain, unclear regulations, competition; mussels – encouraging – leasing and market issues; oyster – strong markets, encouraging, leasing issue; new species – encouraging

In response to questions regarding the specifics of the study, Michael Gardner stated that all assumptions and other concerns would be laid out clearly in the full report

Panel discussion – challenges for successful business, pros and cons of Maine's business climate for marine aquaculture

Grace Cleaves, Peter Cowin, Chip Davison

The purpose of the panel was to begin a discussion about whether there are economic development strategies that should be part of the Task Force's recommendations.

Grace Cleaves – Coast of Maine Organic Products: They have an office in Portland and production facilities in Downeast Maine. The company was created in response to fish processors need to get rid of waste. The company composts fish waste with other materials. Economic impact: \$130,00 payroll in Washington County and \$200,000 to Maine truckers. Transportation costs take a big chunk out of their profit margin. Challenges - availability of fish waste and transportation costs.

Peter Cowin – Seabait limited: This company is in the process of starting up company for farming marine worms by adapting technology used in the UK to Maine. Why Maine? Interest was shown by Maine aquaculture industry; the incubator program at CCAR in Franklin (1st incubator tenant); and Sea Grants funding for development work. There are both physical and political difficulties. The company has grown in R & D. The challenge in future will be the importation of live product. The market – 300-400 t sand worms (larger than state landings).

Chip Davison - Great Eastern Mussel Farms: An increased seafood supply is needed due to an increase in demand and aquaculture is the logical source of supply. GEMF employs 80 people and sells 8 million pounds of mussels per year. There is great potential for expansion. There is a strong market. We need to level the playing field. More public access is needed. More piers are needed. U Maine needs more research.

Brian Beale noted the role of ME Aquaculture Innovation Center in economic development.

Sue Inches stated that she would provide a 1 or 2 page summary on public investment in aquaculture.

There was a discussion on the tasks in the legislative resolve related to economics.

SAP response to economic studies:

Rob Bauer responded to the Economic Study and Panel: He stated that the need for jobs on the coast is gone with the exception of Washington county. Four industries are running the economic engine of the Maine coast – boat building, tourism, home building

and commercial fishing. He disputes the figures regarding mussel employment. He referred to the Pinfold study results regarding salmon and noted that if return is so great, why are they trying to the repeal penny per pound fee (it should go up). Shellfish aquaculture is highly subject to fluctuations in wild stock. Maine has the highest cost in the nation for doing business. The oyster market is small – if production doubles, prices will go down. There are constraints on employment, the cost of doing business, and constraints on state resources.

There was a discussion regarding Rob's presentation. There was frustration expressed and statements made regarding the accuracy of his information. In response to questions regarding his role as a stakeholder and the sector that he represents, Rob stated that he represents large shellfish because he is a partner with Evan Young and has a wild shellfish business. There was disagreement expressed regarding how Rob represented himself.

Task Force discussion on economics:

Paul Anderson began the discussion by stating that there is a place for aquaculture in Maine's economy. He suggested a recommendation on the role of research that would include the need for research funds and a recommendation regarding start-up funds for new businesses. Josie asked for a write-up from the staff on how aquaculture compares with other industries in ME and along the coast. Carolyn Manson stated that she can get studies and Kathleen Leyden stated that the SPO also has information. Van Perry stated that he would work with Sue Inches to come up with economic recommendations.

Discussion on role of University in research. Recognized the new facility in Franklin. There is potential and a need is recognized for further research. Support the continuation of Maine Technology fund (MTI) and use existing programs and ongoing funding. Consider making recommendation to expand MTI.

Regarding the inclusion of the results of the economic study in the TF's recommendations, it was suggested that a staff member should distill what the work into a 1 or 2 page summary

TF information requests: 1) specific information for next meeting regarding effects of aquaculture on tourism; 2) Gardner Pinfold 10-year projection; 3) summary of studies and comparison with other industries in bullet form.

Blaine House Conference on Natural Resource-Based Industries:

Aquaculture has a 2.5 hour slot during the conference program in the a.m. – Sue Inches asked the TF for ideas as how to best use that time. Spencer Appollonio will not present his paper. Because of the existence of the taskforce and its pending, detailed recommendations, DMR was not overly specific in its recommendations on aquaculture that were prepared for the consideration at the conference. The process for the conference was explained. The group recommended the following topics for discussion at the Blaine House conference strategy discussion, right to farm legislation, education, and research. Paul Anderson will have conversation with David regarding Blaine house participation.

Chris Hamilton provided a summary of the SAP's meeting in Belfast where they reviewed the DMR's proposed standards for noise, light and structures

Mary asked the TF to let her know if there are information summaries about the leasing process (chart form) that would be useful for the November 6 meeting. Josie repeated her interest in having a chart that compared the aquaculture leasing process, submerged lands leasing, etc. She offered to help with this.

PUBLIC COMMENT SESSION

TF members present: Will Hopkins, Jim Dow, Van Perry, Paul Anderson, Jim Salisbury, Des Fitzgerald, Josie Quintrell

1. Andy Goode, Atlantic Salmon Federation: Comments on today's discussion. Bay Area Management – best way to protect wild salmon stocks, involve many stakeholders, some consensus between industry and some groups that science should drive bay area management. Pro-active stance needed – 2 examples why – ISA in Cobscook & Pen. Bay – no aquaculture, so now is a good opportunity to determine what and where aquaculture is appropriate. ASF promotes exclusion zones. Pen Bay should be an exclusion zone for salmon aquaculture. Funding available thru NMFS to create bay-specific plans. Stakeholders in Bay Management – include Pen. Indians, ASF and fed. Gov't.
2. Scott Tilton, small-scale aquaculturist: small farmers feel like they are fighting for their existence. David v. Goliath. Fighting against interests that don't support a working waterfront. He is an environmentalist. He wants to do something that contributes to the economy and is good for the environment. Shellfish aquaculture is good for the environment. Environmentally benign way of growing protein. Municipal jurisdiction – process already includes municipal participation. Concerned about municipal veto.
3. Jane McClosky, EPBEA: TF process. DMR acting as 3 branches of government –legislative, judicial and executive TF relying to a dangerous extent on DMR. DMR spin has blunted and muddled concerns of citizens. Industry and DMR believe environmental concerns are fig leaf of aesthetic concerns. Draft vision statement – said aquaculture is economic boom before study complete. Concerned TF is giving recommendations during process. DMR set up the poor process. Doesn't feel public is being heard. EPBEA supporting Marsden Brewer's aquaculture. Scallop spat grown out in cages on bottom. Licensing rather than leasing. Transparency is not enough. Must think out of DMR box in order to fix process that is broken.

4. Vivian Newman, Sierra Club: Supports Andy Goode's statements. Disappointed that TF was unable to go to SC symposium on climate change and aquaculture. Invest in research for Bay Management – ecosystem-based management. More emphasis on pollution prevention – research needed.
5. Marsden Brewer, EPBEA: economic impact and potential – scallops in Pinfold study – ME can get better prices. Price in study is off. Collecting spat for 4 yrs. Seed isn't a problem. There is a supply. Need something in law that allows spat collection to be used in aquaculture. More economic potential in scallops than in report. Paul asked Marsden to provide the TF with information regarding prices of cultured scallops
6. Jesse Leach, aquaculturist: dwindling fish stocks, enrolled in fisherman's retraining. Got into shellfish aquaculture. Can't see anything wrong with shellfish aquaculture. Pollution in ocean – asked # of times waters had to be closed due to aquaculture – none was the answer. 2 people on one boat cause same pollution as town of 10,000 people. Other environmental problems not caused by aquaculture.
7. Todd Marolla, Northport: "perception" – not aware of lease proposal in Northport – no chance to comment on it. Met with DMR several times – and was advised that if they took exception to leases, only recourse is litigation. Asking TF to spare people from litigation. Can hear music from speakers on the lease. Personal experience with a lease. DMR has acknowledged that they are censoring information sent to TF. Mussel raft is not a thing of beauty. Pollution from shellfish aquaculture acknowledged by DMR. (ed. note – lease he spoke of is an experimental lease. It went through the administrative process and the town was notified. It is more than 1,000 feet from shore, so there are no riparians). (Paul Anderson stated that there is no censoring of communications to the TF.)
8. Marsden Brewer: fundamental head-butting between him and DMR staff. Don't carve ocean into lots. DMR should license equipment to go into approved areas.
9. Ron Huber, Pen Bay Watch: public trust issue – add aquaculture into the list of those moorings that towns license. Shoreline zoning. Support Josie's proposal on bay management. Supports Dave Schmanska's proposal. Look at other aquaculture niche items. Look to DEP expertise on scenic impacts. Careful looking at economic data. Complemented Scott Tilton on aquaculture operation.
10. Scott Tilton: economic impact – false dichotomy between aquaculture and tourism. Aquaculture is a plus for tourism, a draw. Kayakers come up to facilities and ask questions. Positive thing for Maine.

11. Mike Hastings, Aquaculture Innovation Center: R & D related to aquaculture. TF needs to establish values. Does TF share same values as MCHT, industry, etc.?
12. Jane McClosky: Hearings in Perry – fishermen testimony – loss of gear from salmon farms. Fish farms have taken best scallop ground. Green slime in Cobscook Bay. 1,000 acres have been taken over by green slime. (Paul Anderson asked for information on green slime for Eastport meeting)
13. Ron Huber: should be moratorium on leasing during review process. Benthic impacts – TF should look at video footage. Tourism and resort industry – need dark night sky. Washington County – not a lot of tourism and resorts – so that is where fish farming should take place.
14. Eric Moran, fisherman, aquaculturist: closure areas due to pollution. Work on pollution part before bay management. Look into long-line technology. Bagaduce River – 10 recreational boats will close the river to harvesting. Bay management – start with pollution caused by recreational boats and tourism. Invasive species brought in by recreational boats.
15. Joseph Krulis: Real Estate agent: Trying to sell house for last year in Northport that looks out to a mussel lease. Don't put farms in front of million dollar homes. Put them in coves in front of wooded areas.